Before the National Labor Relations Board

For Review of Petition Dismissal by Region 4 Philadelphia Pennsylvania

Allied Barton Security Services Employer

And in re 04-RC163090

National League of Justice and Security

Professionals (NLJSP) Union

And

Service Employees International Union Local 32 BJ

Interested party

Request for Board Review administrative Dismissal of Petition.

I Introduction

The Petitioner stipulates that SEIU Local 32BJ represents probably one hundred times the number of Allied Barton Security Officers that the Petitioner does in the Philadelphia Market. The Petitioner has one unit certified by Board election and covered by a separate extant CBA with Allied Barton in the Philadelphia Market as identified by the SEIU in their motion. The Philadelphia Security Officers Union (PSOU) also has at least one certified unit with Allied Barton Security Services in the same Philadelphia Market. The Petitioner's previously certified unit is located at the Gallery Place Mall and the PSOU unit is on the campus of the University of Pennsylvania and again the Employer in both cases is Allied Barton Security Services.

The overwhelming success of the SEIU in Philadelphia and indeed in many security markets nationwide has been accomplished through a series of Neutrality Agreements (NA) as referred to by SEIU or what the NLJSP prefers to call a Monopoly Agreements (MA). The SEIU (MA)

generally require; (1) that an Employer refuse to recognize any Union except the SEIU,(2) the Employer foreswear access to the (R) process in front of the NLRB and (3) that an Employer produce to the SEIU a comprehensive list of employees complete with addresses and phone numbers upon either SEIU request or upon contract award. The (MA) usually also compels voluntary recognition of the SEIU after a majority of interest cards are presented to a third party.

The monopoly agreement is then used to accrete a distinct unit with a separate community of interest to a multi-site master CBA as filed by SEIU in their motion to dismiss. The (MA) and the Master CBA produce a feudal effect when combined with the argument that the cobbled together Philadelphia Market Unit is the only appropriate unit.

The reversal of ***Dana 351 NLRB 434 (2007) by Lamon's Gasket Company 357 NLRB 72 (2011)***, the abandonment by the Employer of the (R) process and other outrageous excesses of the monopoly agreement and the idea that only an Allied Barton Philadelphia-wide unit is appropriate militate to make Security Officers in Philadelphia serfs in thrall to the Service Employees International Union.

The result is that the presumption of majority SEIU asserts in the instant case is irrefutable and irrebutable ***ad infinitum***. The joint reasoning of the Employer and the SEIU blocks all access to the R process for the employees in the petitioned for unit and all access to any considered UD action thereby creating what the Petitioner believes is an unlawful and overly broad Union Security Clause.

The best tonic to this Middle Ages approach to labor relations in the Philadelphia Market for Security Officers is found in the Board's

wisdom in ***Specialty HealthCare 357 NLRB (2011)*** and ***Macy's Inc. 361 NLRB 4(2014)*** These seminal precedents restore the community of interest and establish an overwhelming community of interest standard that must be asserted and then supported in the submissions of those parties hoping to counter the petitioner's assertion of an appropriate unit.

General Electric 180 NLRB 1094 (1970) as cited by SEIU is a curious precedent to cite when that case covers a series of manufacturing plants with a twenty year history of negotiating between a single Employer and a Union Council. The Petitioner sees very little resemblance to the instant case. ***Stay Security 311 NLRB 252*** cited by Employer and SEIU is inapplicable because this Petitioner approaches the Board during an open window of a CBA where the RC petition is timely. ***Stay Security 31l NLRB 252*** is a case the Petitioner is very familiar with. That case seated in Region Five arose when a 9(b)(3) Union sought a RC petition on the basis that a mixed-guard unit by nature was not appropriate so that the CBA between a mixed-guard Union and an Employer in place could not bar election. The contract bar fell on that Petitioner when his petition was ruled untimely. The Petitioner seeks this unit in the first open window in the forty five month Master CBA negotiated under the aegis of the Philadelphia (MA). The petition is by Board standard metrics a timely petition.

The evidence in the instant case is that the SEIU with Employer assistance has cobbled together an **inappropriate** unit with no interchange of employees, separate supervisors, separate locations, separate work place rules and separate wage scales into a single inappropriate unit. These affected employees in the petitioned for unit share absolutely no community of interest with the other units in the Employer sanctioned inappropriate bargaining unit. No community of

interest save one, Allied Barton writes payroll checks or rather contracts some third party to write payroll checks to all the employees in Philadelphia Market.

The only remedy to an inappropriate unit assembled without the NLRB is a determination by the NLRB. Only the Board can rule on whether a unit is appropriate. The Board standard for whether a unit is appropriate is the community of interest standard found in ***Speciality Health Care 357 NLRB (2011)*** and in ***Macy's Inc 361 NLRB 4(2014)*** . The employees in the instant case are identified as 21 in number assigned to Penn Medicine@Rittenhouse as Security Officers in Employer's filing 11/06/2015.

The wage scale at Penn Medicine is different than it is at the Gallery where the Petitioner represents the Security Officers where some officers are paid more and some less than the officers at PennMedicine@Rittenhouse. The wage scale is higher according to anecdotal evidence for those employees of Allied Barton on the University of Pennsylvania campus represented by Philadelphia Security Officers Union(PSOU) another independent 9(b)(3) UNION also in the Philadelphia Market as defined in the Master CBA. The Allied Barton employees identified as "Guards" and represented by 9(b)(3) Unions in the Philadelphia Market seem to flourish because the interests of their community supersede the broad philosophical goals of the Master CBA.

The Master CBA as submitted to the Board by the Petitioner, the Employer and the SEIU is silent on wage scales that are in use at PennMedicine@Rittenhous or **any other location.** In fact, except for certain minimum amounts that include minor annual adjustments in a

table under Article 10 hourly compensation is unaddressed in the Master Philadelphia CBA.

The Preamble of the Master CBA submitted for Philadelphia by the Employer and SEIU espouses the noble cause of preserving Union jobs but also pledges to keep Employer clients ignorant of "internal disputes". The flawed document abandons the true duty of any CBA which is to establish the wages and working conditions for the affected unit employees. The Master CBA mentions 'riders" that spell out wage scales but there is not one listed for the petitioned for unit. Strikes, Lockouts, Picketing and hand-billing are outlawed along with communicating with a third party client allowed to direct the removal of a Security Officer without just cause. The Section 7 rights are waived explicitly and Section 9 rights are prohibited implicitly.

Wages are unaddressed and just cause is marginalized. The submitted CBA serves no purpose save that of guaranteeing a tame Union and SEIU hegemony while making the Philadelphia Security Officer a uniformed serf. How does any of this promote stability and industrial peace or any of the goals of the Wagner Act as amended?

. There are share-cropper contracts out of the Old South that were more respectful of a worker's rights. In America and around the world the City of Philadelphia is revered as the birthplace of Freedom, The Petitioner sees no merit in that city being the place where Freedom is finally laid to rest. That would be the effect of dismissing this petition based on the specious argument that only a Philadelphia wide Allied Barton Security Officers unit is appropriate. Such a decision would combine the petitioned for unit with a clearly defined community of interest into a cunningly comprised and highly disparate grouping of

other units. The standard to overcome grows out of ***Specialty Healthcare 357 NLRB (2011)*** and ***Macy's Inc 361 NLRB 4 (2014)*** is an overwhelming community of interest. That standard is just not present or even argued in the submissions of the Employer or SEIU in the instant case.

II The Inapplicability of the Multi-Site Argument in the instant Case

The "Determination of an appropriate bargaining unit is guided by the objectives of ensuring employee self-organization, promoting freedom of choice in collective bargaining, and advancement of industrial peace and stability. These objectives are realized when the members of an appropriate unit share, **inter alia**, a community of interest in wages, hours, and other terms and conditions of employment." ***290 NLRB 150 PJ Dick #1***

The Initial SEIU 32 (BJ) motions on page 2 under **Background** provide a great deal of illumination on the issues before the Board starting with ",including Philadelphia is largely contracted, with building owners and managers contracting with individual security contractors that directly employ security guards." It is not the Employer that is the operative factor in determining what is the appropriate unit. It is the Employer/Client contract because those employees on each Employer/ Client contract have a distinct community of interest to include wages, hours and other terms and conditions of employment. They are not interchangeable with Allied Barton (A/B) Security Officers at Drexel University (another A/B Security client in the Philadelphia Market) or on the campus of the Comcast facility (another A/B Security client in the Philadelphia Market). They do not share Supervision or workplace rules

with any portion of the inappropriate unit in play city-wide except possibly on the campus of the University of Pennsylvania.

The SEIU in concert with the Employer argue that a multi-site unit in the City of the Philadelphia Market is the only appropriate unit. The RD of Region 4 appears to have adopted that view in the dismissal of the petition filed in the instant case. The RD has clearly erred in part because of the unique nature of a 9(b)(3) Guard Unit and a 9(b)(3) Guard Union and Contract Security. Guard Service is engaged at a particular location for a particular reason and operates under workplace rules unique to that location. The Security Officers standing post in the offices of Region Four have a completely different set of qualifications, experience and tools that they bring to bear to accomplish their tasks than the Guards at the petitioned for unit, the Petitioner's Unit at the Gallery Mall or at any of a myriad of the Employer's contract sites.

When the client of the Employer is an agency of the Federal Government a large number of the rules, wages and working conditions are governed by agency rules and by the Service Contract Act (SCA) as amended. Those A/B employees share no community of interest with the A/B employees in the instant case and yet under the SEIU reasoning they are bound in the same unit as the petitioned for employees. Yet their community of interest would bind all of them together.

The Employer properly sees all the Guards as employees, the SEIU sees them and their widely disparate community of interests in individual units like the petitioned for unit as revenue streams where money flows to coffers labeled dues and benefits. The RD of Region 4 sees them as merely fungible guards essentially with their Article 7 and Article 9 rights forever locked in the hands of the SEIU at least in

Philadelphia**.** That is clearly a myopic approach and frankly more than a little insulting to professional Security Officers.

Brink's, 272 N.L.R.B. at 869 and University of Chicago 272 NLRB 873 (1984) clarify Guards as a unique field singled out by Congress for special handling by the Board. The denial of access to the election mechanism of the Board on an RC petition timely filed by a 9(b)(3) Union for a pure guard unit frustrates the Congressional intent that Guards be represented by pure Guard Unions vice mixed Guard Unions.

Where is the opportunity for the exercise of the exercise of Article 7 and especially Article 9 rights in the instant case of an alleged multi-site Guard unit with all units accreted to a generic CBA? There is a clearly defined and separate community of interest in each accreted unit unless we adopt the idea that guards are not just fungible commodities.

The SEIU in their motions on page 5 cites ***Wisconsin Bell Inc. 283 NLRB 1165(1987).*** The Board will not disturb a unit "***absent compelling interests."*** Those compelling interests exist in this case. Wisconsin Bell Inc involved an eight man certified unit separated from a larger unit by a separate CBA appendix when there was already a serious community of interest and common bargaining. The instant case involves what both the Employer and the SEIU maintain is a city-wide unit. However what exists in Philadelphia is a hodgepodge composed entirely of separate recognized 9(b)(3) units that have never been allowed to select their representative by election and never will. The employees in the petitioned for unit will **never be allowed to change their representative** if this petition is dismissed.

The Monopoly agreement in place in the City of Philadelphia means that the only 9(b)(3) units that may seek election are the ones the

Employer and the SEIU agree to not put under the umbrella under the Master CBA. The employees of the Employer in the Petitioner's CBA in place at the Gallery Place Mall would never have been represented by a Union except for the efforts of the Petitioner. The SEIU decided they did not want those Security Officers as members. How is that a city-wide unit?

The combination of the SEIU Multi-Employer Neutrality Agreement and Multi-Employer, Multi-location Master Collective Bargaining Agreement is repugnant to the National Labor Relation Act 29 USC 159(b)(3) and all rights enshrined in Article 7 and 9.

This combination and a subsequent ruling that such a unit as the inappropriate one sought by the SEIU and the Employer is appropriate are contrary to the clear congressional intent that guards should be represented by Guard Unions. The net effect of a finding that only a city-wide unit composed of separately accreted and recognized units is appropriate is that it bars security officers from ever selecting by election after a timely R petition a pure guard Union as their representative or prevail on Region 4 to process a UD petition.

The even more repugnant effect of the "neutrality agreement" in place in Philadelphia and other large cities is that that they will give way to statewide and then nationwide neutrality agreements that will eventually eliminate all 9(b)(3) Unions. The neutrality agreements especially those of the SEIU are usually the result of corporate campaigns, as outlined by David Foley of WSI Inc. in congressional testimony September 28 2006, that concentrate certain tactics on a Security Provider. The neutrality agreements lead to the requirement that

the Provider surrender his employee lists to SEIU for a second campaign at the homes of individual Security Officers.

The Guards in the instant case are unable to express themselves because they have been lumped in with 200 other locations with no connection and indeed no knowledge of their fellows. If they wish to change Unions under the guidelines of Region 4, they must seek the agreement of 30% of their market wide unit members without any means to identify or reach them. If they wish to seek the withdrawal of Union Shop authority, they must seek the agreement of 30% of their market wide unit members without any means to identify or reach them.

The Monopoly Agreement (MA) the Employer and the SEIU established to foster the Master CBA in Philadelphia was negotiated prior to and without the consent of the affected employees. The Master CBA was adopted without the consent of the affected employees. The intent to have the SEIU as their representative was gained from employees several years ago. It is manifestly clear that after three of four years the signer of an SEIU interest card may not even work for the Employer any more. The period of time that a particular guard works for a particular employer is rarely more than three years.

Under the monopoly agreements signed with the SEIU, employees often receive a half dozen organizers on a home visit made possible by the disclosures extracted under the (MA). Those interest card signers are probably long gone and any intimidation they may have received to sign those cards lost to History. However under the errant finding of the RD of Region 4, those cards will continue to bind their successors forever as they are not to be permitted access to the election machinery of the Board.

The Master CBA imposed on the affected employees works against the interests of the affected Employees in the Petitioner's opinion. Guards are, by the nature of their work, subordinate to a mostly unique series of workplace rules unsuitable to a multi-location unit. That multi-site unit cannot be established without a clearly overwhelming community of interest. All precedents cited by the Employer and the SEIU and adopted by the RD of Region 4 in support of the Motion for Dismissal of the Petition claiming that the multi-site unit is appropriate in the Philadelphia Market are for non-guard multi-site units. The very nature of Contract Security is unsuitable for multi-site units organized along anything but Contract-wide and contract specific guidelines anchored in each individual Employer/Client Security Contract. A multi-site location organized along any other lines such as City-wide or market-wide abandons absolutely the community of Interest standard for deciding an appropriate bargaining unit when dealing with 9(b)(3) units. That is repugnant to the National Labor Relations Act.

The Congress recognized the peculiar nature of Security Officers by enacting 9(b)(3) and recent precedent like ***Macy's Inc***. militate against any unit where the employees do not have a community of interest. The Guards in the petitioned for unit share no interest except their Employer with the Guards at Drexel University, the Comcast facilities, the University of Pennsylvania or at any of the Museums in the City of Philadelphia. The NLRB process is their only mechanism for addressing discontent with their representation but by ruling that the only appropriate unit is a City wide unit they are forever locked out of the process.

III **The Exclusion of the SEIU 32(BJ) on 9(b)(3) Grounds**

The case for exclusion under 9(b)(3) in the election machinery of the Board is recognized by the SEIU when they placed in their memorandum of Law to Region 4 the cite ***University of Chicago 272 NLRB 873 (1984).*** The primary argument they make is that the Board erred in deciding that case even though there is no real daylight from the congressional intent, the plain language of the 9(b)(3) language in the NLRA as amended and the decision as rendered in ***University of Chicago***.

The dismissal of the Petition in the instant case is to use the election machinery of the Board to fix forever the representation of the petitioned for Guard Unit by a mixed guard Union contrary to the Act, the precedent of the ***University of Chicago*** and clearly stated Congressional Intent. The inclusion of the SEIU 32(BJ) would have the same effect.

IV **Conclusions of the Petitioner**

The Board guided by ***Specialty Healthcare and Macy's Inc***. should find the Philadelphia Market Unit as per se inappropriate, the petitioned for unit as appropriate thereby reversing the petition dismissal by the RD of Region 4, directly order a DDE and exclude SEIU 32(BJ) from any ballot to be marked in the affected Unit as guided by ***University of Chicago 272 NLRB 873 (1984).*** The Board as an alternative to either the SEIU unit or the petitioned for Unit may reasonably find as appropriate the employees of the employer engaged in providing security services on the Employer's contract for security on the campus of the University of Pennsylvania in Philadelphia Pa. minus the usual exclusions of course.

For the Petitioner NLJSP

Ronald A. Mikell, President

Ronald A. Mikell

Ronald A. Mikell

7528 June Street

Springfield Va. 22150

Cc By Email

Counsel SEIU 32 BJ

Employer Counsel

Region 4 NLRB